

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7932 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS

THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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| 1 | Whether Reporters of Local
Papers may be allowed to see the
judgement ? |
| 2 | To be referred to the Reporter
or not ? |
| 3 | Whether their Lordships wish to
see the fair copy of the
judgement ? |
| 4 | Whether this case involves a
substantial question of law as
to the interpretation of the
constitution of India, 1950 of
any order made thereunder ? |
| 5 | Whether it is to be circulated
to the civil judgte ? |

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PATEL MAFATLAL SHAMALDAS - Petitioner(s)

Versus

DHAMASANAGRAMPANCHAYAT &26 - Respondent(s)

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Appearance :

MR SK PATEL for Petitioner No(s).: 1.

MR HS MUNSHAW for Respondent No(s).: 1,2.

Mr H L Jani, A.OVERNMENT PLEADER for Respondent No(s).: 3.

SHRIKAR H BHATT for Respondent No(s).: 4.

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CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS

THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 15/06/2005

ORAL JUDGMENT

Rule. Mr H S Munshaw, learned Advocate waives service of notice of rule on behalf of respondents no.1 and 2. Mr H L Jani, learned AGP wivesservice of notice of rule on behalf of respondent no.3.

1. The petitioner has challenged the order dated 16.4.2005 passed by the Joint Secretary (Enquiry), Panchayats, Rural Housing and Rural development in Revision Application filed by the petitioner under section 259 of the Gujarat Panchayats Act. His say is that he has been served with a notice to remove a verandha i.e. portion which according to the authority, is illegal and causing encroachment on the Government land. To challenge the said notice, the petitioner had preferred appeal before District Development Officer and later on the revision application is since order in appeal was against him.

3. It is submitted by Mr S K Patel that while deciding the revision application, the revisional authority has not taken into consideration the report which was prepared by the District Inspector of Land Records which clearly shows that no encroachment has been committed by the petitioner. Upon perusing the impugned order and having heard the learned Addvocates for the parties, it appears that the said document is of importance and the same has not been considered by the revisional authority. That has resulted into causing prejudice to the petitioner.

Sitting in writ jurisdiction under Article 226 of the Constitution of India, it would not be possible for us to go into the question of fact and taking into consideration the said report. The best course that could be resorted to is to remand the matter back to the Joint Secretary (Inquiry), Panchayats, Rural Housing and Rural Development. We, therefore, direct that the matter be remanded back to the Joint Secretary (Inquiry), Panchayats, Rural Housing and Rural Development and he shall decide the same by taking into consideration the report dated 16.4.2005 Annexure 'M' and Annexure 'O' - the D.I.L.R. sheet dated 24.3.2003 and by affording opportunities to all the parties to this petition. For that purpose if need be, he may summon the D.I.L.R. with relevant records before him at the time of hearing.

2.In the result, the petition is partly allowed. Order at Annexure 'O' is quashed and set aside. Rule is made absolute to the aforesaid extent.

[Kshitiij R Vyas, J.]

[Akshay H Mehta, J.]

msp